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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974.

No. 74-34

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 336, AFL-CIO,

Petitioner,

vs.

ILLINOIS BELL TELEPHONE COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Petitioner, International Brotherhood of Electrical Workers, Local 336, AFL-CIO, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on May 2, 1974.

OPINIONS BELOW.

The Decision and Order of the United States District Court for the Northern District of Illinois is unreported in the official reports but may be found in the Bureau of National Affairs Labor Relations Reference Manual, ... F. Supp. ....., 86 LRRM 2588 (N. D. Ill., 1973) and appears in the Appendix

hereto. The Opinion of the Court of Appeals affirming the District Court's dismissal action upon entirely different grounds is reported at 496 F. 2d 1, 86 LRRM 2590 (7th Cir., 1974) and appears also in the Appendix hereto.

JURISDICTION.

The judgment of the Court of Appeals was entered on May 2, 1974 and jurisdiction is conferred on this Court by Title 28, U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. Whether an employer may instigate, encourage and finance resistance by its employee-union members to the payment of disciplinary fines levied against those members for crossing union picket lines during the course of a lawful economic strike against the employer and then, when this resistance results in the union filing a lawsuit to collect such fines, further encourage and finance continued resistance by those members by paying the entire legal expenses of each member in the litigation without violating the "financing proviso" of Section 101(a)(4) of the Labor Management Reporting and Disclosure Act (commonly referred to as the Landrum-Griffin Act, 29 U. S. C. §§ 401 *et seq.*).

2. Whether a United States District Court has jurisdiction to enjoin the employer from engaging in the above-described activities and to enter an order for other appropriate relief, including damages. (29 U. S. C. § 412).

STATUTORY PROVISIONS INVOLVED.

UNITED STATES CODE, TITLE 29, § 411(a)(4):

> **§ 411. Bill of rights; constitution and bylaws of labor organizations**
>
> **(4) Protection of the right to sue.**—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

UNITED STATES CODE, TITLE 29, § 412:

> **§ 412. Civil action for infringement of rights; jurisdiction**
>
> Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located. Pub. L. 86-257, Title I, § 102, Sept. 14, 1959, 73 Stat. 523.

UNITED STATES CODE, TITLE 29, § 402(d):

§ 402. Definitions

For the purposes of this chapter—

(a) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(c) "Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(d) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

STATEMENT OF THE CASE.

From May, 1968, to September of that year, the International Brotherhood of Electrical Workers, Local 336 (hereinafter referred to as either the "Union" or "Local 336")[1] conducted a long and bitter economic strike against the Illinois Bell Telephone Company (hereinafter referred to as either the "Company" or "Bell"). During this strike several members of

1. For most of this strike, other IBEW locals also participated in the strike. See, *Florida Power & Light Co.* v. *International Brotherhood of Electrical Workers*, ... U. S. ...., 42 U. S. L. W. 5059, 86 LRRM 2689 (1974).

Local 336 crossed the Union's picket line and worked for the Company in violation of their obligations as members under the Union Constitution. Following the end of the strike, Local 336, at the instance of charges being filed by fellow members, brought charges against the strike-breakers. After due notice was given and a full opportunity to be heard before the Local Union Trial Board, certain members were found to be guilty and fined amounts ranging from $100.00 to $500.00.

The Company urged these individuals to resist paying the fines; it urged them to appeal the decision of the Local Trial Board to the International Officers pursuant to the internal procedures set forth in the Union Constitution.[2] In fact, Bell paid the *pro rata* portions of the fines required under the Constitution to be paid monthly in order to perfect the internal appeal.

Following the denial of the appeal by the International President and Vice President, both of whom found evidence to support the Trial Board's findings, the Company encouraged the employees to continue in their refusal to pay the remaining portions of the fines; Bell even promised to pay all legal expenses that might result from such a refusal.

Faced with this continued intransigence of the strike-breakers to pay their fines, the President, Thomas Beagley, on behalf of Local 336 initiated a lawsuit in the Circuit Court of Cook County to enforce the Union Constitution and collect the fines. The delinquent members responded with an Answer containing seven affirmative defenses, and they also filed various counterclaims against the Union to collect strike benefits, the installments paid on the fines and their attorneys' fees; the members' attorneys' fees and all costs of the suit were paid by Bell and continue to be so paid in accordance with its earlier promise.

2. It is important to note that the *first* proviso to Section 101(a)(4) restricts access to the Courts and other agencies until there has been an exhaustion of reasonable internal union procedures for a period of four months so long as such procedures are not futile.

Initially, the Union's response was to file an unfair labor practice charge against Bell, however, after an investigation, the Thirteenth Region of the National Labor Relations Board refused to issue a complaint against the Company. An appeal of that decision to the General Counsel of the Labor Board in Washington, D. C. was denied and no complaint on the Union's charge was ever issued. The charges were dismissed.

On October 26, 1972, Local 336 filed the present lawsuit against Bell alleging that its conduct in encouraging the strike-breaking members to resist the fines, by encouraging and paying for the steps taken to exhaust internal Union appeals, by encouraging continued resistance to payment until legal action was initiated and by continuing to pay the legal expenses incurred by the members was unlawful under the second proviso to Section 101(a)(4) of the Labor Management Reporting and Disclosure Act (also known as the Landrum-Griffin Act). The Union sought an order against the Company, *inter alia*, enjoining it from any other financing activity and to reimburse the Union for its attorneys' fees in the state court action. Jurisdiction for this suit—aside from involving a question arising under a statute regulating interstate commerce, 28 U. S. C. § 1337—was directly asserted to arise under Section 102 of the Landrum-Griffin Act, 29 U. S. C. § 412.

While the District Court found that the payments made by Bell to their employees violated the financing proviso, it held that it had no jurisdiction under Section 102 of the Act, 29 U. S. C. § 412, to entertain a suit by a labor organization against an employer (A7-A8). As to that section of the Act, the Court stated, "The above section confers jurisdiction in this Court only for actions 'against a labor organization,' not for actions against employers." ..... F.Supp. ....., 86 LRRM 2588, 2589 (A7).

While affirming the result, the Seventh Circuit Court of Appeals reversed the lower court's reasoning.[3] The Court of Appeals held that the District Court did in fact lack jurisdiction over the subject matter of the present suit because Illinois Bell did not violate any right given the Union under Section 101(a)(4), 29 U. S. C. § 411(a)(4); 496 F. 2d 1, 4 (A5). This result, according to the Court, follows from the happenstance that Bell's financing and encouragement took a form necessitating that the Union, rather than the member, file the initial pleading. This result obtained notwithstanding the affirmative counterclaim filed *against* the Union *by* each of the members. 296 F. 2d 1, 3-4 (A4-A5).

REASONS FOR GRANTING THE WRIT.

There are several not entirely unrelated reasons making a grant of this petition appropriate. The present case requires the construction and application of a federal statutory provision relating to commerce which raises troublesome and novel problems of interpretation and enforcement with far-reaching ramifications in the relationship between labor and management.[4] While the issues raised herein are unique, there is a tremendous need for guidance in applying this particular federal statutory provision because of the burgeoning litigation which has recently

3. See footnote 5 of the Opinion, 496 F.2d 1, 4 (A5). See also footnote 2 of the Opinion 496 F.2d 1, 2 (A2-A3) where the Court of Appeals expressly disagrees with the jurisdictional significance of the second sentence in Section 102 so heavily relied upon by the District Court.

4. Judge Richey opens his decision in *U.A.W.* v. *National Right to Work Legal Defense and Education Foundation, Inc.*, 366 F.Supp. 46 with the following passage:

> "This legal action is brought by the International Union of the United Automobile Workers of America and nine other Unions to correct an imbalance in labor-management relations resulting from the alleged interference by 'interested employers' in judicial disputes between Unions and their members." 366 F.Supp. 46, 47.

arisen over the financing proviso to Section 101(a)(4). The opinions and decisions in this respect have been varied, confused and inconsistent; in one instance there exists a direct conflict.[5] Also, the dangers which the Company's course of conduct presents to internal Union tranquility, organizational solidarity as well as fiscal security is so substantial as to warrant review.

I.

Novel and Troublesome Issues in an Area of Growing Litigation with Confused and Inconsistent Results.

While the LMRDA (Landrum-Griffin Act) was passed in 1959 including Section 101(a)(4) and its two provisos, the implementation of the second proviso was slow indeed. No cases construing it arose for almost ten years until 1965 when the Musicians Union unsuccessfully interposed that language as a defense in a suit by one of their own members in *Farowitz* v. *Associated Musicians of Greater New York*, 241 F. Supp. 895 (S. D. N. Y., 1965). However, even after that case, the proviso remained more or less dormant for a substantial period of time.

However, since the filing of the instant lawsuit the legal activity under this financing proviso has been growing steadily, and

5. The conflict is between the New York District Court in *Farowitz* v. *Associated Musicians of Greater New York, Local 802*, 241 F.Supp. 895 (S.D.N.Y. 1965) on the one hand and the Illinois District Court and Seventh Circuit Court of Appeals in *Adamszewski* v. *Machinists, Local 1487*, ... F.Supp. ...., 84 LRRM 2791, 2793 (N.D. Ill., 1972); .... F.2d ...., 86 LRRM 2592, 2595-2597, No. 73-1166 (7th Cir., 1974) on the other; the conflict between those cases centers on the term "interested employer" and the breadth of the interpretation to be given to it. The arguments, legislative history and philosophy of construction used in those cases are relevant to the instant suit before the Court though that issue is not directly framed in this case. The conflict mentioned indicates not only the importance of the issue itself but also the prevailing lack of understanding presently existing with respect to the operation thereof requiring a present need for some authoritative delineation as to its proper operation.

As will be shown later in this petition, even the two *Adamszewski* decisions do not concur in all respects.

growing steadily more unclear. Besides the Illinois District Court's opinion in the present case holding that the statute confers no jurisdiction for suits by a union against an employer despite the latter's clear violation of the proviso, the Northern District of Illinois has also rendered another decision and opinion in this area. *Adamszewski* v. *Machinists, Local 1487,* ..... F. Supp. ....., 84 LRRM 2791 (N. D. Ill., 1972).

Adamszewski, as did the present case, arose out of an internal union dispute created by disciplinary action taken against certain members. In that case, members who crossed the picket line of a sister union in violation of questionable instructions from their officers to the contrary were given notice of charges having been filed against them and they were ordered to appear on a given date to stand trial. Rather than following Bell's strategy of having the members participate in the hearings with the full monetary protection of the employer (thus deferring the ultimate court struggle until the time came for enforcement and collection), Northwest Airlines chose to pick up the legal tab immediately. The Airline financed a lawsuit to enjoin the disciplinary hearings themselves; of course, the result of the strategies of Northwest and Bell is identical—the ultimate use of legal process to obstruct the enforcement of union discipline. The former is achieved through a legal injunction enjoining the disciplinary hearings from proceeding, while the latter is achieved by each member refusing to comply with the discipline until a court order is entered commanding them to do so. According to the Seventh Circuit, the former activity triggers the second proviso to Section 101(a)(4) while the latter does not.

The District Court in *Adamszewski,* relying solely upon the financing proviso as creating an affirmative defense, dismissed the lawsuit because of Northwest's participation. The Court made no distinction between the legal bases for the causes of action it was dismissing; the proviso was a complete defense for all claims then pending before the Court against the union.

Thus, the District Court fashioned a remedy for the employer's financing not explicitly provided for in the statute as well as one that served to defeat the rights of the employees which the basic statute was meant to protect. The court made no mention as to the scope and applicability of the injunction remedy explicitly provided for in the enforcement section of the statute, Section 102, 29 U. S. C. § 412; it was this statutorily designated remedy which Local 336 chose, a remedy which would only terminate the alleged unlawful financing without depriving the individual employee of his day in court to challenge the legality of his fines.

During the course of the appeals in the present case and *Adamszewski*, the District Court for the District of Columbia rendered its opinion and order in a suit which will undoubtedly ultimately be before this Court too—*U. A. W.* v. *National Right to Work Legal Defense and Education Foundation, Inc.*, 336 F. Supp. 46 (D. D. C., 1974). This District Court too rejected the narrow and technical construction of the proviso espoused in *Farowitz* (see footnote 5, *supra*), stating as follows:

> The instant proviso is not a narrow qualification of the main text, as defendants suggest, but serves the critical purpose of limiting employer conduct and thereby benefitting labor organizations in their administration of judicial disputes with dissident members. If plaintiffs were without a right of action to secure that unmistakable benefit, the proviso would be a dead letter and the express congressional intent to safeguard intra-union affairs from employer interference would be frustrated. 336 F. Supp. 46, 49.

The Court went on to hold that the statute conferred upon a union a right of action under 29 U. S. C. § 412 to enjoin employer litigational financing activities. A sharp contrast to the Illinois District Court opinions.

In resolving the *Adamszewski* (No. 73-1166) and *IBEW* appeals (No. 73-1452) the Seventh Circuit only added to the growing confusion as to the scope and proper manner of en-

forcement of this newly discovered proviso. In *Adamszewski* v. *Machinists, Local 1487,* ..... F. 2d ....., 86 LRRM 2592, No. 73-1166 (7th Cir., 1974) the Court upheld the use of the proviso as an affirmative defense to member-union suits financed by an employer wherein the member is the plaintiff and the union is the defendant but only in cases in which the cause of action arises out of some provision of Title I of the Landrum-Griffin Act, 29 U. S. C. §§ 411(a), (b). The court specifically denied this defensive protection to member suits financed by the employer arising from other statutory provisions, such as the Railway Labor Act, or the general common law. It was unclear from the opinion whether the union would then have the concomitant privilege to limit its own members' rights to institute such other actions.

In the instant case, *International Brotherhood of Electrical Workers, Local 336* v. *Illinois Bell Telephone Company,* 496 F. 2d 1 (7th Cir., 1974) (A1-A5), the Court of Appeals recognized that 29 U. S. C. § 412 gives "[a]ny person whose rights secured by the provisions of this subchapter have been infringed. . ." the right to sue for injunctive relief in federal court. 496 F. 2d 1, 2 (A2-A3). It further recognized that a labor organization was a "person" under the statute, 29 U. S. C. § 402(d), and arguably had rights vis-a-vis an interested employer under the financing proviso of Section 101(a)(4). 496 F. 2d 1, 2-3, ftn. 2 (A3). However, the court found no jurisdiction over this lawsuit because the strategy chosen by Bell resulted in the Union having to file the initial pleading in the state court proceeding rather than its members, thus substantially ignoring the significance of the Company's initial conduct herein. Bell encouraged members of Local 336 not to pay the fines and guaranteed them that it would insure any financial loss resulting therefrom. Besides insuring against future losses, the Company also paid the immediate installments due on the fines needed to perfect the members' internal Union remedy with the obvious intention of complying with the first

proviso to Section 101(a)(4) conditioning future legal remedies upon exhaustion of reasonable internal Union procedures. Finally, the Company offered to cover all court expenses (including attorneys' fees) for those willing to go all the way in resisting the fines. The Company, from the beginning, was readying for eventual litigation over the discipline, whether they filed the suit or the Union did. A comparison between the conduct of Northwest Airlines in *Adamszewski* and Bell in *IBEW* reveals no distinction of substance; if the one employer was in violation of the financing proviso, then they both must have been.

Further, the Court of Appeals without any real explanation dismisses the significance of the counterclaims filed *against* the Union *by* its members in the state case.[6] 496 F. 2d 1, 3 (A4-A5). Thus, despite its total reliance upon the alignment of the parties as being determinative of the substantive content of Section 101(a)(4), the Court of Appeals failed to abide by its own logic as to the affirmative suit launched *by* each member with Company financing *against* the Union. Probably this was the result of the Court's view that the financing limitation only applied to Title I lawsuits and not any other pre-existing legal remedies available to Union members.

However, this latter view has been substantially called into question in a recent decision and opinion coming out of the District of Columbia District Court in a subsequent ruling in the aforementioned *Right to Work* suit, *U. A. W.* v. *National Right to Work Legal Defense and Education Foundation, Inc.*, ... F. Supp. ....., 86 LRRM 2699 (D.D.C., 1974). In this controversy the defendant committees raised an issue as to the Title I restriction upon the applicability of the financing proviso, citing *Adamszewski*. The District Court, by Judge Richey, refused to apply such a narrow interpretation of the coverage of

6. Under Illinois practice, counterclaims need not be related to the cause of action in the primary suit, Ill. Rev. Stats., 1973, Ch. 110, Paras. 38, 44; only a portion of the counterclaims in the present state suit were related to the primary fine collection action.

that provision. He distinguished the *Adamszewski* rationale as only applying in situations where the proviso is used in a context of an affirmative defense to a member's suit. The Court held that just because the employee may not properly be deprived of his non-Title I remedies, it did not necessarily follow that the employer's financing activity could continue with impunity. Rather, the appropriate action was the grant of affirmative injunctive relief against the offending employer.

Thus, if the actions which the employers may not encourage, participate in and finance extend beyond mere Title I suits, then the Seventh Circuit cannot so lightly dismiss Bell's financing of the several employee counterclaims seeking strike benefits as well as recoupment of fines paid and attorneys' fees for the simple reason that these are suits *by* members *against* the Union.

Another suit where the applicability of this financing proviso has been raised as an issue in the pleadings (affirmative defense) has not yet resulted in a decision and order on the merits, *Carstensen* v. *Amalgamated Meat Cutters and Butcher Workmen of North America,* ..... F. Supp. ....., ... LRRM ....., Case No. CV-72-0-309 (D. Neb., 1974). This case will ultimately join the above decisions in struggling to find the content of the financing proviso of Landrum-Griffin.

It is true that no direct conflict exists between the decisions of the various separate Courts of Appeal; however, the great variety of opinions described above indicate the need for some determinative decision with respect to this federal statutory provision to serve as a future guidepost for the Circuit Court as well as the District Court judges who must presently, or will very soon, be asked to interpret and enforce the second proviso to section 101(a)(4). The Supreme Court has never decided the issue; however, out of seven Circuit Court and District Court opinions construing this provision, no two concur as to the nature, scope and proper manner of enforcement of this slippery statutory proviso.

II.

Importance of Issue to the Internal Harmony and Fiscal Security of Unions.

Aside from the growing need for a definitive legal interpretation of this proviso, there is also the overriding importance to labor unions of deterring the kind of champertous conduct which Bell has followed in the present suit. Whereas *bona fide* internal dissent is stimulating to the growth and integrity of any institution, fabricated disenchantment is not. Occasionally, purely internal institutional procedures may ultimately prove to be inadequate to the complete resolution of a *bona fide* conflict and a resort to traditional and more expensive legal remedies is necessary. In such circumstances, the cost of litigating the issues is worth paying in order to air a nagging grievance. However, when the internal division results not from deeply felt grievances of organizational members arising from substantive complaints of those dissidents but rather from the vexatious meddling of a third party the effect is highly corrosive. This is especially true where the interests of that third party are in conflict with those of the organization which is being subverted. At the behest and at the expense of the intruder, every union action, every union rule enforced will be subjected to the scrutiny of the courts; every decision made, regardless of its propriety will be reviewed and dissected in a legal laboratory. Any organization, labor organization or even a corporation, when subjected to this kind of harassment must collapse under the unbearable weight. The cost of this kind of activity is prohibitive even for the most substantial union treasury.

It is thus understandable how Judge Richey could conclude in *U.A.W.* v. *National Right to Work Legal Defense and Education Foundation, Inc.*, 336 F.Supp. 46, 47 (D.D.C., 1974) that the case involved a serious imbalance in the labor management relationship (see footnote 4, *supra*). The Seventh Cir-

cuit in *Adamszewski* even recognized the gravity of this interference:

> In addition, the employer stands to gain from any divisiveness within the union which could weaken it at the bargaining table where it would be unable to present a solid front against NWA, Any weakening of the representational strength of IAM as the exclusive bargaining representative of NWA's employees in the crafts and classes of service would redound to NWA's benefit at the bargaining table and in its over-all relationship with labor. Appellants argue that no legal, financial or business advantage is gained by NWA from this suit. It is clear that NWA has a practical business interest in the suit and could gain an improvement in its collective bargaining position. ..... F.2d ....., 86 LRRM 2592, 2597 (7th Cir., 1974).

In the *IBEW* case, the Court rendered its decision reluctantly, ". . . because we recognize that the harm to the union is the same whether the employer finances defensive resistance to union discipline or underwrites the filing of a suit to enforce the LMRDA Bill of Rights." 496 F.2d 1, 4 (A5).

It is precisely this harm not only to the present plaintiff, but also to all labor organizations in this country, which warrants review of the Seventh Circuit's opinion below.

CONCLUSION.

Because of the confusion currently existing among the federal judiciary as to the meaning and proper manner of enforcing the second proviso to Section 101(a)(4) of the Landrum-Griffin Act as well as the severely corrosive nature of the threat that the type of conduct engaged in by Bell presents to labor unions, it is respectfully requested of this Court that a writ of certiorari be issued to the Court of Appeals for the Seventh Circuit and that the decision of that Court be reviewed herein.

Respectfully submitted,

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APPENDIX.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

SEPTEMBER TERM, 1973 — JANUARY SESSION, 1974

No. 73-1452
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 336, *Plaintiff-Appellant,*

vs.

ILLINOIS BELL TELEPHONE COMPANY, *Defendant-Appellee.*

Appeal from the United States District Court for the Northern District of Illinois.
No. 72 C 2698
THOMAS R. MCMILLEN, *Judge.*

ARGUED FEBRUARY 27, 1974—DECIDED MAY 2, 1974

Before SWYGERT, *Chief Judge*, and STEVENS and SPRECHER, *Circuit Judges.*

SPRECHER, *Circuit Judge.* Plaintiff IBEW sued Illinois Bell Telephone Co. to prevent it from financing the defense of IBEW members in a state court suit for enforcement of union fines. The question on appeal is whether section 101 of the Labor-Management Reporting and Disclosure Act (29 U.S.C. § 411) confers on a labor union the right to resolve its disputes with dissident members without financial support of those members by their employer.

The dispute between IBEW and certain of its members dates back to the 1968 strike against Illinois Bell. IBEW

alleges that some of its members crossed picket lines and continued to work during the strike. The union filed charges in an intra-union proceeding against those members and conducted hearings which resulted in the assessment of fines of $100 to $500 against those found guilty. The fined members paid installments on their fines in order to appeal to the international vice president. After losing their appeals, the members refused to pay the balance of their fines.

The local president brought suit in the Circuit Court of Cook County to collect the fines. The members asserted seven affirmative defenses and filed a counterclaim to recover the installments they had paid. Illinois Bell admits that it is paying the legal fees and court costs of defendants in the state suit. It has also reimbursed the members for the installment payments.

IBEW filed an unfair labor practice charge of improper interference in internal union affairs with the NLRB. The regional director dismissed the charge on the basis of the Board's view that an employer does not violate the National Labor Relations Act by offering legal and financial assistance to strikebreakers. *Leeds & Northrup Co.*, 155 NLRB 1292 (1965); *Standard Plumbing & Heating Co.*, 185 NLRB No. 63 (1970).[1]

IBEW's complaint in the district court alleges jurisdiction under section 102 (29 U.S.C. § 412) and charges Illinois Bell with violation of the second proviso of section 101(a)(4). Section 102 states: "Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district

1. Illinois Bell contends the NLRB has exclusive competence over this case and that its dismissal preempts federal court jurisdiction under the LMRDA. The contention is erroneous because the LMRDA proscribes conduct not covered by the NLRA. Claims regarding violation of section 101 are properly referred to the district courts. *Boilermakers* v. *Hardeman*, 401 U.S. 233, 237-39 (1971).

court of the United States for such relief (including injunctions) as may be appropriate. . . ."[2]

Since a union is a "person" (29 U.S.C. § 402(d)), the question is what rights the union has under section 101(a)(4):

> *Protection of the right to sue.*—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

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2. We note that some courts have read the second sentence of section 102 to limit jurisdiction to unions as the only proper defendants. ("Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.") *Thompson* v. *New York Central Rr. Co.*, 361 F.2d 137 (2d Cir. 1966). As shown by the exhaustive discussion of the legislative history in *Rota* v. *Brotherhood of Railway, Airline & Steamship Clerks,* 338 F.Supp. 1776 (E.D. Pa. 1972), the second sentence concerns venue over labor organizations and does not narrow the jurisdictional grant of the first sentence.

Defendant cites a number of cases for the proposition that LMRDA jurisdiction does not cover employers. The cases are inapposite; they hold only that the LMRDA creates no rights in an employee pertaining to his employment relationship. *E.g., Abrams* v. *Carrier Corp.*, 434 F.2d 1234 (2d Cir. 1970), *cert. denied,* 401 U.S. 1009 (1971); *Duncan* v. *Peninsula Shipbuilders Ass'n,* 394 F.2d 237 (4th Cir. 1968). The second proviso in section 101(a)(4) arguably does create rights in a union against an interested employer.

We know of only three cases which deal with the second proviso of section 101(a)(4); *UAW* v. *National Right to Work*, 366 F.Supp. 46 (D.D.C. 1973); *Adamszewski* v. *Machinists Local 1487*, No. 73-1166 (7th Cir., April 12, 1974); and *Farowitz* v. *Musician Local 802*, 241 F.Supp. 895 (S.D. N.Y. 1965).[3]

UAW v. *National Right to Work* is the only affirmative suit by a union to vindicate its right under the second proviso. The union asked for equitable relief against a private foundation which solicited contributions from employers to finance legal actions brought by employees against their unions. The court found that section 101 confers substantive rights on the union which "include express assurance to labor organizations that they shall be immune from 'interested employer' intrusion in their judicial disputes with workers." 366 F.Supp. at 48. Judge Richey found that, absent jurisdiction in the district courts, "the proviso would be a dead letter and the express congressional intent to safeguard intra-union affairs from employer interference would be frustrated." 366 F.Supp. at 49. The court ruled it had subject matter jurisdiction over the suit.

IBEW urges us to carry the broad interpretation of section 101 in *National Right to Work* to its logical conclusion, that the proviso prohibits employer support of union members as defendants. We believe, however, that the expansive language of *National Right to Work* must be read in the context that the defendant foundation was financing suits *by* members *against* unions. Judge Richey may be correct in saying that Congress intended to prevent any form of management interference in internal disputes between unions and their dissident members.[4]

3. *Adamszewski* and *Farowitz* are cases in which the defendant unions raised the financing proviso as an affirmative defense. In *Adamszewski*, this court upheld dismissal of the complaint because the suit was financed by an interested employer. In *Farowitz*, the court did not dismiss the suit because it found the employers were not "interested."

4. We find nothing in the legislative history concerning the defense of suits against union members.

But the language Congress chose prohibits the financing of "any such action," which refers back to the right of a member "to institute an action in any court." We can only presume that Congress meant what it said, that an interested employer may not finance the institution of a suit by employees, but is free to finance a defense or a counterclaim.

We reach this conclusion reluctantly, because we recognize that the harm to the union is the same whether the employer finances defensive resistance to union discipline or underwrites the filing of a suit to enforce the LMRDA "Bill of Rights." But the plain language of section 101(a)(4) gives plaintiff only half the right it attempts to assert against the employer, the statute does not protect it from company financing of employees as defendants. Nor would section 101 proscribe the employer's instigation of resistance to the fines, since the employees have filed no suits against the union.

We hold that Illinois Bell did not violate any right given IBEW under section 101(a)(4). We affirm dismissal of the complaint for lack of jurisdiction over the subject matter.[5]

AFFIRMED.

5. The district judge found that Illinois Bell violated the second proviso of section 101(a)(4), but that section 102 did not grant jurisdiction over an employer. We disagree with his reasoning, but reach the same result of dismissal.

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 336, AFL-CIO, *Plaintiffs,* *vs.* ILLINOIS BELL TELEPHONE COMPANY, a corporation, *Defendant.*	No. 72 C 2698.

DECISION AND ORDER

This case comes on to be heard on defendant's motion to dismiss the Complaint for lack of jurisdiction over the subject matter. The Complaint is brought by a union against the employer of its members, alleging a violation of the final proviso of Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act (29 U. S. C. § 411(a)(4)). This section is as follows:

> (4) *Protection of the right to sue.*—No labor organization shall limit the right of any member thereof to institute an action in any court, or in any proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof;

> *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

Jurisdiction is asserted under Section 102 of the Act which provides (29 U. S. C. § 412):

> Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred or where the principal office of such labor organization is located.

A union is a "person", and presumably it has rights under Section 101(a)(4), but does the statute give it the right to sue an employer for an alleged violation of those rights? We think not. The above section confers jurisdiction in this court only for actions "against a labor organization," not for actions against employers. Cf. *Thompson* v. *New York Central R. Co.*, 361 F. 2d 137 at 145 (2nd Cir. 1966). A statute creating a cause of action where it did not previously exist should be carefully examined, so as not to subject defendants to litigation unintentionally. Cf. *McNutt* v. *General Motors Acceptance Corp.*, 298 U. S. 178 at 189 (1936).

The stated policy of the Labor-Management Reporting and Disclosure Act (commonly known as the Landrum-Griffin Act) is to protect the rights of union members, particularly as expressed in Section 2(b) of the declarations (29 U. S. C. § 401(b)). *Duncan* v. *Peninsula Shipbuilders Association,* 394 F. 2d 237, 239 (4th Cir. 1968). The vehicle for protecting unions from unfair practices of employers has long been the National Labor Relations Act, and Congress made in clear in Section 2(c) of the statute relied on herein that it intended

to supplement and not to usurp or change the exclusive jurisdiction of the National Labor Relations Board. Cf. *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236 (1959).

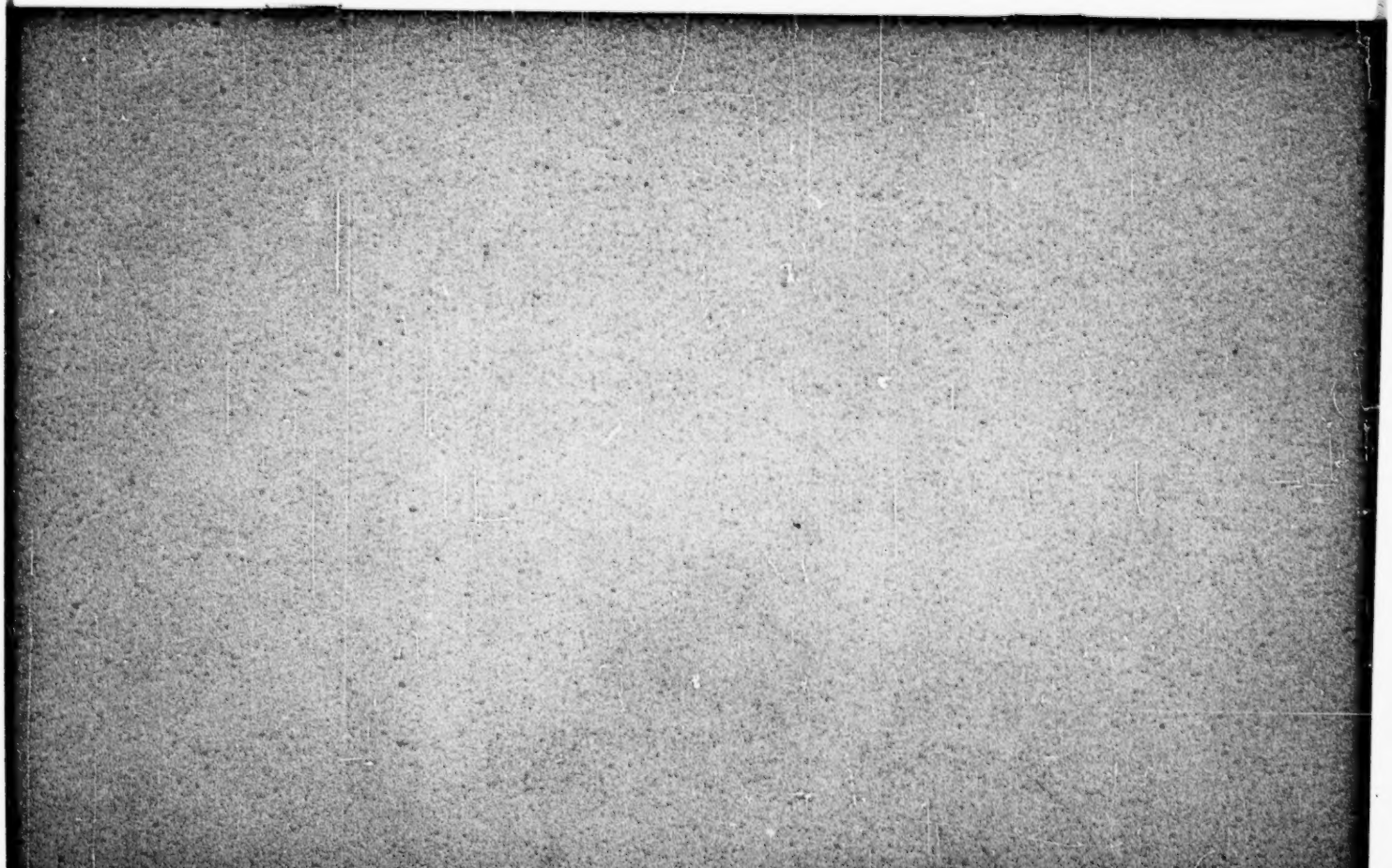
In determining the scope of the Landrum-Griffin Act, it must be borne in mind that this court possesses only the limited jurisdiction which is granted to it by the Constitution and laws of the United States. The need to observe the proper confines of statutory jurisdiction is nowhere more important than in the sensitive and unique area of labor relations. Since the plaintiff has not demonstrated any specific grant of jurisdiction to us, and since we do not find it in Section 102 of the Act, the Complaint must fall.

Paragraph 1c of the defendant's motion alleges that "there is no right of action against an employer . . . under the Labor-Management Reporting and Disclosure Act," and paragraph 2 of the motion is based on a failure to state a claim. F. R. C. P. 12(b)(6). The Complaint alleges in substance that the defendant employer made two payments to certain union members. It allegedly paid their legal fees in defending a suit brought against them by the union in the state court to recover a fine imposed on them. It also allegedly reimbursed these members for that portion of the fines which the employees had paid during their intra-union appeal contesting them. We are of the opinion that the acts allegedly committed by the defendant clearly fall within the last proviso of Section 101(a)(4), but the lack of jurisdiction in this court precludes further consideration of this or any other defense on the merits.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Complaint is dismissed for lack of jurisdiction over the subject matter.

Enter:

/s/ THOMAS R. MCMILLEN,
Judge, U. S. District Court.



Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-34

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 336, AFL-CIO,
Petitioner,

vs.

ILLINOIS BELL TELEPHONE COMPANY,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

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OPINIONS BELOW.

The opinion of the Court of Appeals is reported at 496 F. 2d 1. The decision of the district court is not officially reported. Both are reprinted in the appendix to the petition.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition, if it be assumed that the Court of Appeals had jurisdiction.

QUESTION PRESENTED.

Whether Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U. S. C. § 411) (com-

monly called the Landrum-Griffin Act) gives a union the power to prevent all other persons from receiving any legal assistance or encouragement of any kind from an interested employer in the defense of a suit brought by that union.

STATUTES INVOLVED.

The statutes primarily involved are quoted in Appendix A to this brief.

STATEMENT OF THE CASE.

After what page 4 of the petition correctly calls "a long and bitter economic strike," the Union purported to fine some of its members amounts ranging from $100 up to $500. Some 13 members refused to pay part of those fines, and were then sued in a state court in an action brought for the Union which is still pending. Those defendants have resisted that suit by seven affirmative defenses and by minor defensive counterclaims. Among their principal defenses are the complete failure of the Union to comply with Section 101(a)(5) of the Landrum-Griffin Act, and with the promises made by a Union agent named Murphy. (See Appendix B to this brief.) The Union's pleadings do not claim that these defenses are frivolous, nor do they question the workers' and the employer's honest belief that they will be sustained if properly presented. Since the individual employees could not afford an adequate defense for themselves, the employer has paid their legal fees. Compare *NLRB* v. *Boeing Co.*, 412 U. S. 67, 82 (1973) (dissenting opinion), in which Mr. Justice Douglas noted:

> "It is no answer to say that the reasonableness of a fine may be tested in a state-court suit. That envisages a rich and powerful union suing a rich and powerful employee. Employees, however, are often at the bottom of the totem pole, indigent, and unworldly when it comes to litigation. Such a suit is likely to be no contest."

It is highly probable that at least part of the legal costs of all the cases on union fines which have come to the attention of this Court were paid by interested employers.

This Union's first reaction was to try to invoke the National Labor Relations Act. But the General Counsel for the Board refused to issue a complaint in March, 1971, because the company had not committed any unfair labor practice. Nineteen months later the Union filed the present suit seeking (1) to enjoin the employer from paying any part of the cost of defense from the Union's suit to collect fines, or doing any other act which might be construed to "encourage" the individuals to resist the Union's actions against them; and (2) to collect the Union's attorneys' fees and costs in both courts from the employer. Clearly, this would deprive the Union's own members of their only real chance to defend their rights in the state court.

Although the worker-defendants affected by this case happen to be members of the Union, that fact is only incidental to the Union's reading of the statute. Its contentions would apply with equal force to any suit which the Union might bring against an individual who had never joined the Union or who might not even be a member of the bargaining unit. The Union clearly wants the employer excluded regardless of who may be sued.

ARGUMENT.

I. There Is No Conflict Between the Courts of Appeal.

Although the Landrum-Griffin Act was passed in 1959, page 7 of the petition concedes that "the issues raised herein are unique," and page 13 admits that "no direct conflict exists between the decisions of the . . . Courts of Appeal. . . ." (The only claim of any direct conflict is between a district court and a circuit court on a very minor point admittedly not involved here. Petition, p. 8.) So far as we can determine, this is the only case in 15 years in which any union has even at-

tempted to enjoin all employer participation in a lawsuit in which the union is the real plaintiff. This demonstrates that the sweeping assertions on pages 7, 8 and 14 of the petition about "far-reaching ramifications," "dangers," "unbearable weight," "prohibitive" cost, and "serious imbalance," are simply not true. Nor is there anything in this record (or out of it) which would support the claim made for the first time on page 14 of the petition that the grievances of the Union's members who refused to pay its fines are not "deeply felt." Even the Union's own complaint in this case does not challenge the good faith of those members who refused to pay up to $500 voluntarily. There is no disagreement by *any* other court with the Seventh Circuit's unanimous holding that the proviso to Section 101(a)(4) does not apply to an employer's payment of the legal fees of union member defendants in an action brought by the Union.

II. There Is No Substantial Federal Question.

The whole purpose of the Landrum-Griffin Act was to protect individual workers against serious abuses of power by unions which were supposed to be helping them. Section 101 is labeled a "bill of rights" and bristles with restrictions on labor organizations. Subparagraph (5) is especially pertinent here because it strictly limits a union's power to fine its members. Subparagraphs (2) and (4) have provisos which qualify their very broad restrictions to some extent. Thus the last proviso to subparagraph (4) (on which the Union here relies) forbids an interested employer not a party to finance "any such action" (meaning "an action in any court" which a member of a labor organization might "institute" against a union's interests). The decisive phrase in Section 101(a)(4) for this case begins with the twelfth word, i.e., "to institute an action. . . ." It is that specific kind of "action" which the last proviso calls "such action. . . ." The Court of Appeals dismissed this suit because there was no "such action." Clearly, the workers who

are being sued have not instituted any action at all. The suit in the state court to collect fines had been instituted *by the Union* for its own benefit and could easily be terminated by it at any time if it became burdensome to the Union.

None of the Congressional factions objected during the Landrum-Griffin debates to employers paying legal fees for worker-*defendants*. Thus Congressman Griffin, whose name is attached to this statute, said:

> "The last proviso in Section 101(a)(4) was added to make sure that the interested employers do not take advantage of rights accorded union members by encouraging or financing harassing suits or proceedings *brought by union members against their unions*. The purpose of the proviso should be kept in mind and it should not be so narrowly construed as to impose unnecessary or unintended restrictions upon employers in relationship with their employees." 105 Daily Cong. Rec. A7915, Sept. 10, 1959, 2 Leg. Hist. 1811 (compiled by N. L. R. B.), quoted in *Farowitz* v. *Associated Musicians*, 241 F. Supp. 895, 908 (S. D. N. Y. 1965). (All italics in this brief are ours unless otherwise noted.)

See also Senator Goldwater ("the right to *bring* a legal action"; "the bill also denies him protection if he is financed or encouraged *in his suit against the union* by an interested employer"; "the limitation . . . would apply only to employers who had a concrete interest in the litigation . . . other than the mere connection with the union member *bringing* the suit") 105 Daily Cong. Rec. 9108-9, June 8, 1959, and A8510, Oct. 2, 1959, 2 Leg. Hist. 1280-1, 1844. Rep. Foley ("the prohibition is limited [to] any individual action *instituted* by a member against his union. . . . But the Griffin bill does not prohibit every employer, only an interested employer, and the inhibited action involved is the particular action of a union member *against* his union or an officer. The prohibition is not against participating in *every* action involving a union under the act." "The provisos in both bills are designed to discourage employer *conception* of

lawsuits by individual members *against* unions.") 105 Daily Cong. Rec. 14227, Aug. 11, 1959, 2 Leg. Hist. 1600. Similarly, Section 101(a)(4) of H. R. 8342 by Representative Elliott, and the same section of H. R. 8490 by Representative Shelley, two of the alternatives to the Landrum-Griffin bill favored by some union supporters, expressly limited this proviso to "*any* action . . . instituted *against* any labor organization. . . ." (1 Leg. Hist. 699, 878), instead of using the word "such" which is found in the statute and produces the same result. A prominent union attorney writing about the proviso shortly after it was passed referred to it as "a defense, in appropriate cases, to a proceeding *brought by the member against* the interest of the union." *Sherman, The Individual Member and the Union: The Bill of Rights Title in the Labor-Management Reporting and Disclosure Act of 1959*, 54 N. W. U. L. Rev. 803, 820 (1960). Subparagraph (4) of the law is entitled "Protection of the right to sue," and does not deal in any way with suits by the union against its own members.

It is obvious why the Union's attorneys much prefer to sue the members by themselves. The amounts involved in this case are too small to justify adequate legal representation at the individual worker's expense, and it would be most unlikely that any group of individuals would be able to share their costs effectively. There would be little danger that the rules of Section 101(a)(5) on union fines or many of the other rights conferred by the Landrum-Griffin Act will ever be effectively enforced if all interested employers can be kept out of the picture.

It is also easy to see why Congress did not want to encourage the bringing of additional litigation *against* unions financed or encouraged by employers not parties. Where a union member is a plaintiff in a major case, he can usually bring a class suit involving a substantial fund and a contingent fee arrangement which will easily attract competent counsel. The numerous cases on the United Mine Workers pension fund are typical. Employer assistance would be unnecessary in such cases to protect

the workers' rights. But when the union is the plaintiff, all the burdens are entirely of its own making, and the individual defendants clearly need help. In such a case there is little room for a contingent fee, and the interested employer is the only likely source of an adequate defense of the worker's rights under the Landrum-Griffin Act. Before that law was passed, a worker could have asked his employer to pay any kind of costs or do any other act so long as there was no unfair labor practice. The circuit court properly held that the Act should not be construed to destroy this very limited protection for an employee-*defendant*. Such an interpretation would actually increase union power over the individual members above what it was before. A proviso to a remedial statute should not be construed to weaken that remedial purpose. *Spokane & Inland R.R. Co.* v. *United States,* 241 U. S. 344 (1916); *Shilkret* v. *Musicraft,* 131 F. 2d 929 (C. A. 2, 1942), *cert. den.,* 319 U. S. 742 (1942).

Of course, if an employer's activities in litigation should coerce or interfere with a union or its members improperly, there would be a violation of the National Labor Relations Act. But, as noted above, the General Counsel of the Labor Board found, after an investigation, that there had been no such coercion or interference in this case.

This record does not show whether these fines comply with the statutes, the Union documents, the "Murphy letter," or the other facts. All of those complicated issues are still to be decided in the state court suit brought for the Union. But if the employees are deprived of all legal assistance by this suit, it is virtually certain that those issues will eventually be resolved in favor of the Union officers, no matter what the law and the facts may be, or how "deeply felt" may be the members' grievances. Hence the Union will always be denied the important democratic benefits which are so eloquently praised in the second, third and fourth sentences of page 14 of its own petition.

This Court has been vigilant to protect the rights of criminal defendants to adequate legal assistance. It should not deny civil

defendants the same protection where the only statute being invoked by the Union was designed to be a major limitation on the abuse of power by unions.

There are other defenses to this suit, but the wording and intent of Section 101 of the Landrum-Griffin Act are both so clear that the petition should be denied on that ground alone.

Respectfully submitted,

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APPENDIX A.

STATUTES INVOLVED.

"SUBCHAPTER II.—BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

"§ 411. Bill of rights; constitution and bylaws of labor organizations

"(a) (1) Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

"(2) Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

"(3) Dues, initiation fees, and assessments.—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not

be increased, and no general or special assessment shall be levied upon such members, except—

"(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

"(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided,* That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

"(4) Protection of the right to sue.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organiza-

tion, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

"**(5) Safeguards against improper disciplinary action.**—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

"(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect." Pub. L. 86-257, Title I, § 101, Sept. 14, 1959, 73 Stat. 522. (Italics in original.)

APPENDIX B.

(Appendix C to the Union's Complaint.)

[ILLINOIS BELL TELEPHONE COMPANY LETTERHEAD]

October 1, 1970

Mr. Thomas L. Beagley
President-Business Manager
Local 336, I. B. E. W.
188 West Randolph Street, Room 2505
Chicago, Illinois

Dear Mr. Beagley:

Shortly before and after November 1, 1968, some members of Local 336 were informed that they had been fined by the Union for strike-connected activity. Many of these employees reported this fact to their supervisors and requested advice as to what they ought to do. The Company advised them that they should appeal the fines to the International Union and make the installment payments necessary for the prosecution of such appeals.

In so advising its employees, the Company was relying upon the so-called "Murphy letter" (copy attached), in which the International Union's Director of Telephone Operations assured the Company that the International would use its best offices to prevent punitive action against employees for strike-connected activity. The Company, with charming naivete, expected that the fines would be vacated in accordance with the Murphy letter.

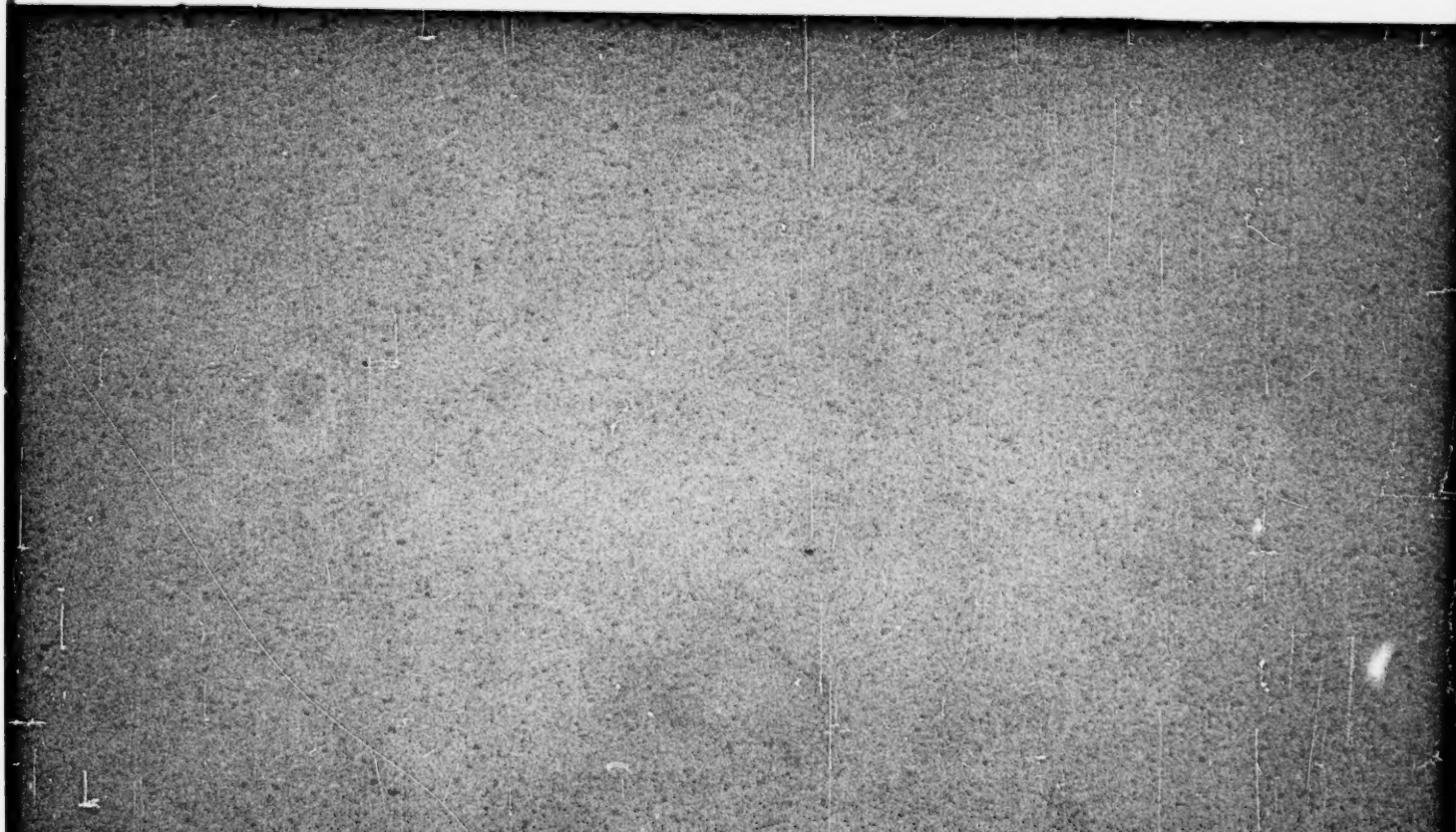
When the employees were advised in the spring of 1969 that their appeals had been disallowed, they were told by the

Company that it would reimburse them for the installment payments on the fines, and it did so, the last such payment in reimbursement being made on July 21, 1969.

Local 336 employees were also told that the Company would pay the cost of defending the lawsuits brought to collect the unpaid fines. This is a continuing undertaking, the Company now being committed to paying for the defense of the suits presently pending.

Sincerely,

/s/ STANLEY D. SCHIEBER



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MICHAEL RODAK, JR., CLERK

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PETITIONER'S REPLY BRIEF.

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Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONER'S REPLY BRIEF.

I.

THE CASE PRESENTS A SUBSTANTIAL FEDERAL QUESTION OF OVERRIDING IMPORTANCE.

In its Brief In Opposition, the Respondent, Illinois Bell Telephone Company can't seem to make up its mind whether the impact of the present case is inconsequential or of devastating significance. On pages 3-4 the Company apparently contends that the present case is a mere anomaly, a unique vagary with no "far-reaching ramifications" nor any real "dangers". Yet, by the time one finishes perusing the remainder of the document the impression is conveyed that the position taken by the Union in the present litigation could literally emasculate the entire

Bill of Rights provisions of the Landrum-Griffin Act. These positions seem somewhat inconsistent. Further, the Company's first assertion as to the inconsequential nature of the threat their activity poses must be questioned in light of the statement which appears in the "Statement of the Case" portion of their Brief:

> "It is highly probable that at least part of the legal costs of all the cases on union fines which have come to the attention of this Court were paid by interested employers." (Brief In Opposition, page 3).

If this is the case, then the Union's contention is absolutely right that the abuse by employers of rights conferred upon *members* by the Landrum-Griffin Act present a serious threat worthy of Supreme Court review. See Judge Richey's statement in the Right to Work Committee case (Petition for Certiorari, page 7, fn. 4).

Notwithstanding the Company's "smoke-screen" defense that it is engaged in a noble endeavor to stand up for "the little guy" who so deeply feels wronged by his "overbearing union" the reality of the situation is quite different. The Company contends that without its gratuitous assistance to these employees they could provide no adequate defense of their own because of the alleged economic realities of the situation. Yet, despite the fact that the considerations cited by the Company on page 6, paragraph 1 of its Brief are present in numerous other legal contexts which daily confront workers (garnishment, wage assignment, landlord-tenant disputes, etc.) the Company has not initiated a selfless crusade to remedy these wrongs. Rather, the Company has limited its "legal aid" activities to the labor relations context; obviously this quite limited concern is not accidental and it is not altruistic. The Company seeks to weaken its collective bargaining adversary through its efforts to encourage IBEW's members to stimulate litigation; the Company has a definite and very possibly conflicting interest in Union-member litigation. It is this selfish interest which caused the

Company to extend its legal assistance to its workers in this limited context. See *Adamszewski* v. *Machinists, Local 1487*, ... F. 2d ....., 86 LRRM 2592, No. 73-1166 (7th Cir., 1974) for a succinct description of the Company's interest in these cases. It is quite ironic that the Company relies upon the *Boeing* decision to support its economic necessity argument because the holding of that case found the identical reasoning not to be convincing; the argument is even more specious in the present context where the purported guardian of worker's rights is a conniving employer rather than an impartial governmental agency

This Company was not a mere bystander to the events which directly led to the state court suit from which the union is seeking to extricate the Company. Bell's encouragement and participation in the controversy began quite early; it was direct and it led directly to the lawsuit and it was fully intended to do so. While the Company seeks to narrow the Court's focus solely upon the alignment of the parties to the state court suit, such a focus distorts the Company's true role—namely, the primary instigator. Not only did the Company encourage the members to protest the discipline in the first instance before the Local Trial Board but it actually paid on behalf of each employee member the monthly installments on the fines necessary to perfect their appeals to the International Officers and thus exhaust their internal Union remedies. This strategy rather conveniently set the stage for an affirmative lawsuit by the members themselves pursuant to Sections 101(a)(4) and 101(a)(5) of the Landrum-Griffin Act, 29 U. S. C. §§ 411(a)(4) and 411(a)(5), had this strategy been adopted. Had there been such egregious violations of the latter provision in the trials of the various members, as was gratuitously, but without foundation, asserted in the Company's Brief (page 2), then clearly these members could have brought an action under Section 102 of that statute, 29 U. S. C. § 412.

However, that particular strategy was not adopted; rather, the Company cleverly promised the individuals involved that it would pay all the attorneys fees and court costs if only the members would continue in their resistance and "sit it out" thus forcing the Petitioner Union to go after them if it should desire to enforce its discipline and collect the fines. In this context, it is rather silly to maintain that the state court action was purely a conception of the Union (Brief In Opposition, page 5). Further, it is ludicrous to suggest that such, or even the majority of the members, contesting these fines were doing so out of a "deeply felt" belief that they had been wronged. It is quite transparent that the Company's scheme of generating and fostering internal dissension and costly litigation was readily accepted by the strike-breaking employees because the plan provided a simple mode of avoiding or delaying payment of the fines imposed. Since they had nothing to lose (because the Company was footing the whole legal bill) they resisted regardless of the merits of the defenses which were being interposed. The Company, of course, cared little of the ultimate success or failure of the litigation as its goal of injuring the Petitioner was achieved by the litigation itself. The potential damage to the Union is tremendous when one views Bell's action in light of its assertion, quoted earlier herein, that all employers engage in this kind of behavior.

It is crucial to keep in mind at this juncture that it was the Landrum-Griffin Act itself and the "Bill of Rights" freedoms secured to individual members which exposed the Petitioner to the injury presently confronting it. On page 7 of its Brief, the Company asserts, without citation of authority of any kind, that the right of employees to employer financing is long standing and pre-dates the passage of Landrum-Griffin and therefore the Union is attempting to take away from workers pre-existing rights under a statute designed to protect those same workers. While the basic premise is questionable in itself, the conclusion ignores a basic reality. That is, prior to the passage of Landrum-

Griffin in 1959 the rights of a member vis-a-vis his union were limited indeed and the scope of disciplinary authority unions could and did exercise was extremely broad. Thus, employer financing was no real threat at that time; there simply were few, if any, rights to be defended.

It was with the inception of statutory safeguards for intra-union democracy that court challenges to union action became practical. It was Landrum-Griffin itself which made the union vulnerable to the kind of activity which Bell has attempted to get away with. Indeed, on page 4 of its Brief, the Company quite candidly admits that its primary reliance in the state court action rests upon subparagraph 5 of the Bill of Rights provisions of Landrum-Griffin. Congress recognized in passing these Bill of Rights protections that increasing the individual freedoms of union members, concomitantly reduced the institutional solidarity proportionately. While such a consequence was wholly justified for the protection of the worker himself, Congress had no intention of allowing employers to utilize this *new* vulnerability for their own benefit. A review of the debate over the financing provision which is the subject of the instant suit reveals quite clearly the extreme concern which existed over the abuse by employers of the rights conferred upon individual members:

> "Mr. Goldwater: Mr. President, as time is running out, I wish to turn to page 4 of the amendment, and invite the attention of the Senator from California to line 4, page 4:
>
> > That no employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.
>
> I think that is a good provision. I agree with the Senator from California, which may surprise him.
>
> Mr. Kuchel: No; it does not surprise me. I think the Senator from Arizona is one Member of the Senate who deserves the salute of all of us for the constant attention he has given in this field.

Mr. Goldwater: I thank the Senator.

I ask the Senator from California if he would accept an amendment in the form of an addition; on page 4, at the end of line 6, before the period, to add the following words: 'unless such employer has no dispute, controversy, contract, connection, or relationship of any kind in any area of activity, with the labor organization against which such action or proceeding has been or is being brought by such member.'

Let us say a businessman is a neighbor of a union member, and he is trying to finance him. The businessman has no dispute with his neighbor. He may be in business in another community. If the language proposed were to apply, it would prevent such a laboring man from being financed by his friend, the employer.

I do not think my request is an unreasonable one. I think it would add strength to the provision which has been proposed.

Mr. Clark: Mr. President, will the Senator yield?

Mr. Goldwater: I am happy to yield.

Mr. Clark: It occurs to me that, while I certainly recognize the good motives of the Senator from Arizona, the addition to the proviso might well open up an undesirable loophole. The instance cited by the Senator from Arizona is a legitimate one to raise; but, on the other hand, would it not be possible for an employer or association of employers who just did not like unions generally to finance the activities which they are forbidden to finance or encourage merely because, as a matter of philosophy—

* * * * *

Mr. Kuchel: I say this, Mr. President, that language is not sufficiently clear to the coauthors of the amendment who are in this part of the Chamber at present for me to stand up and say, 'We accept it.'

The sentence we are discussing, which my friend from Arizona would like to amend by adding more words to it, reads:

> No employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

That is all that clause states. In other words, it would be an unfair practice, it would be against the law, for an employer or an employer association, directly or indirectly, to spend any money or otherwise to get into that type of situation, unless it were a party. Is that not good public policy?

I do believe we ought not to clutter up that language. It is clear. The provision is an attempt to protect a union member who may be engaged in a dispute with the organization. My colleagues would not want me to accept the amendment.

(105 *Congressional Record* 6724-6725, II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 1236-1237.)

When viewed as a whole, the facts as admitted for the purposes of a Motion to Dismiss, indicate that the Respondent Illinois Bell has used the lofty principles embodied in the Landrum-Griffin Bill of Rights to serve its own mundane interests. The record shows a concerted strategy engaged in by Bell to instigate, encourage, foment and finance litigation between the Petitioner and its members; the Company contends that employers throughout the country have followed and continue to follow this strategy extensively. The threat which this wide-spread practice of manipulating worker's rights for employer goals poses is significant; it presents an issue of federal labor policy which demands review by the Supreme Court of the United States.

Respectfully submitted,

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